
Minutes BOARD OF ADJUSTMENT JANUARY 23, 2008

The study session of the Board of Adjustment began at 5:30 p.m., in the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Joe Arredondo
Slade Lawson
Jon Gillan
Todd Green
Dr. Adhikari
Dave Maza

Dave Park, City Attorney
Shawn Daffara, Planner II
Jeff Tamulevich, Code Compliance Administrator
Derek Partridge, Planner I

Absent:

Wallis Stemm
Jeff Winter

There were no citizens at the pre-session.

The Study Session adjourned at 5:55 p.m.

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Joe Arredondo
Slade Lawson
Jon Gillan
Todd Green
Dr. Adhikari
Dave Maza

Dave Park, City Attorney
Shawn Daffara, Planner II
Jeff Tamulevich, Code Compliance Administrator
Derek Partridge, Planner I

Absent:

Wallis Stemm
Jeff Winter

Hearing convened at 6:00 p.m. and was called to order by Chairman Arredondo.

On a motion by Dr. Adhikari, seconded by Slade Lawson, the Board by a vote of 4-0 approved the Board of Adjustment minutes for August 22, 2007.

(Joe Arredondo and Todd Green abstained from this vote as they were not in attendance at the August 22, 2007 Board of Adjustment hearing.)

Chairman Arredondo noted that, at the request of the applicant, the following case has been continued to the February 27, 2008 Board of Adjustment:

Appeal of the December 4, 2007 Hearing Officer's decision to deny the request by the LEWIS PROPERTY (PL070403/VRA07003/VRA08001) (Joseph Lewis, applicant/property owner) located at 241 East 15th Street in the R1-6, Single Family Residential District for:

VAR07024 Variance to reduce the front yard setback from twenty (20) feet to ten (10) feet four (4) inches.

VAR07025 Variance to reduce the required driveway from twenty (20) feet to ten (10) feet four (4) inches.

THE BOARD DISCUSSED THE FOLLOWING CASE:

Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "Install noise mitigation buffer material to the interior of the service bays. The installation to received Development Services staff approval and be completed by 04/01/07:

Request by **CHRONIC CAR AUDIO INC (PL070002/ZUP07006)** (Hub Blanchette, applicant; Aja Investors, property owner) for a use permit to allow a car audio, mobile video and car alarm installation and repair business located at 2404 North Scottsdale Road, in the CSS, Commercial Shopping and Services District.
(Use permit transfer was administratively issued February 1, 2007.)

Shawn Daffara, staff planner, gave a brief history of the case.

Jeff Tamulevich gave a dated history of the Commercial Code Compliance interactions with Chronic Car Audio Inc. – when inspections were held and citations issued in consecutive weeks. He outlined issue items of concern and that, to date, the applicant had declined to comply with COA No. 4. The City Attorney's office was notified regarding the situation.

Staff meet with the business owner regarding the non-compliance issue and possible revocation of the use permit. Owner committed to submitting plans prior to the January 23, 2008 BOA but no progress has been made by the owner. Jeff Tamulevich gave a time line of meetings and events as they transpired.

Mr. Blanchette explained that the economy is not very good right now and has affected his expenses and the number of employees he has been able to retain so that there have been a lot of things going on that required his attention since the November 29, 2007 meeting with staff. Mr. Blanchette stated that he had contacted the immediate neighbors in the nearby vicinity and that no one said they had a problem with the noise generated by his business. He informed the Board that he had been told by a neighborhood representative that 'she had put the last place out of business and that she was going to put him out of business'. These type of threats are unlawful, Mr. Blanchette stated, and he would instigate court proceedings to deal with them.

Mr. Blanchette stated that he and staff had to spend hours to find materials that are acceptable to the City of Tempe Building Safety Department – that the plans and drawings he did submit were not fancy enough to suit the plan checkers. It is his opinion that small businesses are harassed by stipulations and that although he tries to be a good neighbor it is unlawful to try to put him out of business.

Chairman Arredondo explained that while the Board understands Mr. Blanchette's frustrations, there are certain requirements that the City of Tempe need to be met, as outlined in the Zoning and Development Code. The City Council makes the decisions regarding the Zoning and Development Code, and only the City Council can change the code. Any citizen can address the City Council regarding their dissatisfaction with the Code. No one's goal was to put Mr. Blanchette out of business.

Jon Gillan asked what type of noise mitigation buffer materials were specified – were there specific materials identified or specified originally? Mr. Blanchette said there were not.

Mr. Russ Smith, an employee of Mr. Blanchette, stated that he was at the meeting where the sound mitigation was discussed and felt following that meeting that it would be an easy process with which to comply. Mr. Blanchette stated that Russ has spent hours trying to find materials that are acceptable, and that if, he personally had more time he could find something that was acceptable. For 3 years they have been trying to run permits thru without success due to myriad details. Mr. Blanchette stated that no one else is asked to meet these stipulations, and that it is a ridiculous stupid requirement that is only being done to cause aggravation and cost them money.

Mr. Smith stated that he had retrieved the old floor plans that had already been approved and taken them to the City of Tempe to meet with the plan checkers to determine how much of the area needs to be covered and what type of material needed to be installed. Mr. Smith stated that the type of material he had chosen was not acceptable. He stated that he had questioned the plan checker if he had ever heard of this type of requirement for an automotive venue before, the plan checker, who Mr. Smith said had been with the City of Tempe for 9 years, stated that he had not. Mr. Smith further stated that he asked a second plan checker who had worked for the City of Tempe for 10 years if he had ever heard of any automotive business having to go thru this process and he stated that he had not. Mr. Smith stated that what these walls are for, are for entertainment venues where people put on concerts and entertainment where they reach a certain level of noise; that this business is an automotive business with exhaust or car stereos but not for any extended period of time and there is no law that says that their type of business should have this type of material – it refers to entertainment venues not automotive shops or the related automotive industry.

Chairman Arredondo asked if staff had an answer to that. Jeff Tamulevich explained that it his department's job to enforce the Conditions of Approval, not to determine why a condition was issue. If the applicant had a concern with an

imposed condition, the applicant had the ability to appeal the condition within 14 days after the original meeting. Staff is required to enforce conditions that are assigned to specific businesses.

Mr. Blanchette stated that he takes responsibility and understands that it is the code inspector's job to enforce conditions that are stipulated. He stated that the reason that the condition was imposed was because the neighborhood association wanted unnecessary conditions to put them out of business. Mr. Blanchette stated that he tries to take neighbors into consideration by staying closed on Sunday and enforcing parking restrictions.

Dr. Adhikari noted that it is basically at the Hearing Officer level that conditions such as dust control and noise mitigation are assigned to cases. When the Hearing Officer assigned this condition, that was the time to question it or express any concerns. Dr. Adhikari questioned staff if there is any specific buffer type of materials that are required to be used. Shawn Daffara noted that the question has come up numerous times on different cases where this type of condition regarding noise mitigation might be imposed. Any commercial business has to comply with the City of Tempe noise ordinance and the City Zoning and Development code. Until staff sees a plan that accomplishes noise mitigation by reducing the noise decibels, it is difficult to render a decision to the applicant if that plan meets the intent of Condition of Approval No. 4. Shawn explained that once acceptable plans are submitted to the Building Safety Department, a building permit is issued and after installation of the material, a decibel reading is done to confirm it is in compliance.

Discussion was held between Dr. Adhikari, staff and the applicant as to what level of noise decibels (55 decibels) are acceptable. Mr. Blanchette stated that there are jet planes going overhead, that he knows they cannot be more than 10 decibels above the noise in the area, and that he could play a game where he would install small areas (i.e. 5 x 5) of approved material and then it is up to staff to test the noise rating and continue to return time and again to test the noise rating until it is acceptable and the acceptable level of material installed. Mr. Smith stated that they have measured and proved they are only 3 decibels over.

Dr. Adhikari stated that the noise mitigation is a City of Tempe requirements and that is it not a game but something that the City applies by enforcing their ordinances and they have the mechanism to review the design. It seems pretty straightforward that it was given to Mr. Blanchette at the time of his use permit and that he accepted those conditions without complaint.

Mr. Blanchette stated that he is just trying to make a living and the government keeps pounding on him, but that he does accept that this is his responsibility to resolve.

Todd Green asked if this condition part was part of V1 Motorsports before the business got transferred to Chronic Auto? Shawn Daffara explained that when a business applies for a use permit transfer from a previous business, they are transferring not just the use but also the previous conditions. Shawn stated that it was his belief that the previous company was not around long enough to implement the condition, but that condition was assigned to their business also. Shawn stated that he does not know the exact amount of time V1 Motorsports was in business, as he does not have that information in front of him, but he confirmed in response to a question from Mr. Blanchette that he could provide him with a copy of that letter of approval.

Todd Green noted that for a lot of neighbors in the Tempe community businesses are coming to the area where they want to do something different than what has been done in the past and now the new owner is burdened with the COA's that are assigned and that they agree to, to get a use permit.

Mr. Blanchette stated for the record that in all of his dealings with the City of Tempe Compliance Department he has never felt any harassment from staff.

Jon Gillan asked if Mr. Blanchette had the original drawing/floor plans with him, and if Mr. Blanchette had been requested to provide professional drawings. Russ Smith presented drawings/floor plans where the materials would be installed. Mr. Smith stated that he had researched materials on the internet and found some with fire specifications for only \$1 per s.f. Jon Gillan asked if that was considered an acceptable material by the Building Safety Department. Mr. Smith responded that the plan checker had informed him that it was the applicant's responsibility to prove that the proposed material met the acceptable standards and that there was only one place they could test fire proofing material. Mr. Smith stated that staff had told he and Mr. Blanchette at the meeting if he put something on paper it would receive counter staff approval in one day. He learned later that doesn't happen that it takes weeks to get approved.

Jon Gillan questioned if Mr. Blanchette was prepared to install all the fireproofing material that they found. Mr. Blanchette responded that will go all the way around ceilings/walls and he feels it would work really well at a cost of \$3,000. Mr. Blanchette explained that the materials that have been investigated.

Dr. Adhikari asked about the possibility of this being an over the counter approval if the correct information was submitted by Mr. Blanchette. Jeff Tamulevich stated that he could not speak for the Building Safety plan checkers as to why the plans as submitted had been rejected, and that when he had asked about the possibility of this being done as an over the counter approval if the correct information was submitted, he had been informed that if accurate drawings were submitted it can be done.

Mr. Blanchette stated that he will spend more time on this issue to get it done. Dr. Adhikari asked staff if this was a case that could be given a time extension. Shawn Daffara responded that if the Board wishes they can give an extension to the next Board meeting in February if the Board decided to render that type of decision. Shawn explained that if this short time frame was given to Mr. Blanchette the case would then be re-advertised on the next agenda – that it might make more sense to continue the case and give them more adequate time to come into compliance.

Chairman Arredondo asked if there was anyone in the audience that would like to address the Board.

Darlene Justus of the City of Tempe stated that she was representing the North Tempe Neighborhood Association and was the one who turned in the complaint in September of 2007 – at that time there were 3 issues (noise, trash on the grounds and hours of operation). She stated that she never spoke to anyone in the business in any way that she would close the business down. Ms. Justus gave a little bit of history noting that there were issues with the previous tenant. He was just supposed to be selling auto parts but ended up trying to sell ATVS – driving ATV's up and down the neighborhood streets – lots of test driving going on up and down the streets.

There were problems with Scottsdale Motors – real problems – constant off loading on neighborhood streets – NTNA complained to the city and police and were told that the nature of car dealerships is that they move tons and tons of cars in and out. NTNA told the City several times something else was going on – big rigs driving down neighborhood streets – big rigs loading and off loading vehicles. After a period of time, Scottsdale Motors were actually indicted by Maricopa County because they were running illegal operations – they arrested 5 employees of Scottsdale Motors as part of a big sting operation.

At that time, Chronic Audio was just down the road a little on Scottsdale Road doing car audio installations and it was her understanding that they were doing that without a permit. Neighbors had complaints and problems with noise generated by Chronic Audio when they moved to the bigger location. NTNA was concerned at that time that a car audio facility testing stereo systems would be located nearby. NTNA did not set the hours of operation for Chronic

Audio – the business told the city what they were going to do – that was self-imposed by the business itself – NTNA did not have anything to do with that. Their concern was with noise because of the nature of their business of car stereos.

She did stop one morning and spoke with 2 employees about the accumulation of trash. She was actually taking a couple of pictures of trash in the parking lot. These employees were very courteous. Neighbors were complaining that trash was blowing into their yards – for about 2 weeks things were kept up. In September 2007 their business was robust and they had a dumpster overflowing – not dumped for over 10 days – lots of noise – weeds growing up thru all of the gravel – problems with landscaping. That is when NTNA filed their complaint.

The City is the one who wrote the wording on how the noise issue was going to be handled not NTNA. Ms. Justus thinks the shop has a lot of integrity along with their employees. Her son-in-law, a carpenter did not realize that all of his tools had blown out of his truck when his wooden tailgate fell off until he reached her home. He retraced his route and got to Chronic Audio – they had his wooden tailgate propped up outside and gave him all his tools back.

Ms. Justus said that we just need to solve these issues – I know they are saying they talked to different neighbors – at least 4 neighbors that are within 10 feet and closer have not been talked to and are having real problems with the noise issue – especially when the business is installing or trying out new equipment and have the sound cranked up. They have taken care of the landscaping. No one has ever said anything to anyone about shutting down their business.

Todd Green asked Ms. Justus what she has been complained to about. She responded noise and trash blowing into yards.

Dave Maza asked if NTNA was opposed to a time extension. Ms. Justus stated that they are not opposed to reasonable amount of time, and hopes that staff will work with the owner to resolve the issue(s).

Ms. Justus noted that the Conditions of Approval were agreed to on February 1, 2007. Only one of those conditions had a specified date of completion – April 1, 2007. She stated that she knows that the City does not follow up on stipulations even if they are given a date – this is very wrong and the City is dropping the ball – she felt that when she filed her complaint, that it was the first time anyone had looked at the specified completion date assigned to that condition. She stated that she has seen this same situation with tattoo parlors and no one following up with conditions imposed.

Dave Maza questioned staff - what happened that no one followed up on this? Would you be willing to be involved with them and help them work with the Building Safety people to see that an acceptable system is installed?

Shannon Dutton of the City of Tempe, stated that she lives in the area of NTNA and can hear noise generated from Chronic Audio from her driveway – she has asked them to be good neighbors and would they please meet with the noise regulations – neighbors can't even hear themselves on the phone due to the noise – trash is an ongoing issue – even her son has commented on the really loud music generated by Chronic Audio – neighbors on the south side of the road have not been talked to – when Chronic Audio moved into the neighborhood, staff was aware of the extreme frustration of its residents. She understands that sometimes customers come in with loud music and really did want the noise issue taken care of by April 2007. There needs to be a baseline on these things – if the bay doors are open it is not going to stop the noise.

Ms. Dutton responded to a question from Chairman Arredondo that neighbors 6 or 7 houses down can hear the loud music – how sound carries is an old issue. Chairman Arredondo questioned who did you ask to measure the sound – she believes Sherri Lesser, Senior Planner, was in attendance at that meeting.

Ms. Dutton noted that as far as the people employed by Chronic Audio they are ok – she just wants to be in her house and listen to her TV but when her door knocker shakes due to the loud music that needs to be resolved.

Todd Green – can you see where this noise activity takes place? Does it happen in the parking lot? Ms. Dutton responded that she understands that they are installing and testing – sometimes they are open to 10 or 11 at night and the police had to be called – she did not want to file a formal complaint with the police just wanted them to stop.

Mr. Blanchette stated that there was a landlord change in September 2007 and it affected the condition of the landscaping – they personally did not have control over that – still had a lease on north Scottsdale Road location and were in a period of transition in September 2007. He found out that the dumpster people were not actually making pickups – they had a manager change at the same time. He said they talk to customers to please turn down their systems – they try to work hard at it. He stated he likes to hear the complaints himself because then he can talk to the manager to resolve the issues.

Mr. Blanchette stated that he would like more time to resolve this issue and takes personal responsibility for it not yet having been completed.

Todd Green noted that regarding the approved transfer of the use permit – that the other business had trouble getting a use permit for a long time and he was wondering why Mr. Blanchette accepted this use permit transfer when the date for compliance with this condition of approval was going to expire 30/60 days later. Based on the neighbors' descriptions, it sounds like they want the business to be a good neighbor. Mr. Blanchette stated that they have been working on keeping the noise level down – one of the reasons why City staff didn't check was because they were keeping the noise levels down and it wasn't until September that a complaint was made. Again Mr. Blanchette stressed that he takes personal responsibility. Todd Green stated that it sounds like they just had a complete disregard for the noise.

Dr. Adhikari noted that it has been 9 months since the assigned date of compliance for Condition of Approval No. 4. He suggested that Mr. Blanchette could put a sign in the parking lot asking customers to turn down the noise.

Todd Green asked if compliance with this condition will solve the problem – what will happen in July and August when the doors are open – when there is an area where there is a lot of interaction between the business and the neighbors, it wears the neighbors down when they constantly have to be the ones to be responsible to bring these issues forward in order to enjoy their lives and the quality of their lives. It is hard for a citizen to constantly interact with the City to resolve what is going on in their backyards.

After discussion with staff and the City Attorney, Chairman Arredondo asked that Mr. Blanchette please take advantage of this 30 day extension to implement the necessary work and comply with the City. Board members stressed their feelings that if this condition is not complied within this time frame, there will not be another time extension given.

MOTION: Jon Gillan made a motion to continue this case to the February 27, 2008 Board of Adjustment meeting to give the applicant time to fully comply with all Conditions of Approval including Condition of Approval No. 4; Dave Maza seconded the motion.

VOTE: Approved 6-0

The next Board of Adjustment hearing is scheduled for February 27, 2008.

There being no further business the hearing adjourned at 7:26 p.m.

Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:

A handwritten signature in black ink, appearing to read 'Shawn Daffara', with a horizontal line extending to the right.

Shawn Daffara, Planner II

SD:dm